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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,484	03/17/2004	Jerrell D. Hoover	291219-00001	4099

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EXAMINER

DEUBLE, MARK A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/802,484

Applicant(s)

HOOVER ET AL.

Examiner

Mark A. Deuble

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17 is/are rejected.
- 7) ☒ Claim(s) 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/17/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the base" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the support" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the main section" in line 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Oury (U.S. Patent No. 3,945,484).

Oury shows a stacking telescoping conveyor having a main frame 20 having a tail end pivotally secured to a base 7 and a head end opposite the tail end and a stinger 30 telescopically

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mounted within the main frame so that its first end is within the main frame and its terminal end extends from the main frame. A single conveyor belt 19 extends across the top surface of the main frame and the stinger. The conveyor belt is driven by a single drive roller 23 located in the tail end of the main section. Thus Oury shows all the structure required by claims 1 and 5.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1, 5-10, 12-13 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Nohl et al. (U.S. Patent No. 6,360,876) in view of Oury.

Nohl et al. shows a stacking telescoping conveyor shows a stacking telescoping conveyor having a main frame 46 having a tail end pivotally secured to a base 22 and a head end opposite the tail end and a stinger 48 telescopically mounted within the main frame so that its first end is within the main frame and its terminal end extends from the main frame. The stinger is moved relative to the main frame by a winch 142 located in the tail end of the main section. the winch has an extension cable 150 extending to the head of the main section and attaching to the first end of the stinger. The base has a tail end with support structure 34 permitting pivoting of the base relative to the conveyor and a head end having pivotally secured arms 29 terminating in wheels 28. The arms are structured to pivot between a first position wherein they are substantially parallel to the base and a second position wherein they are substantially in a radial position with respect to the base. A lifting mechanism formed by member 36 is attached to the

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base to move the main frame between a lowered position in which the main frame is substantially horizontal and an elevated position in which the head end is elevated with respect to the tail end. However, instead of utilizing a single conveyor belt extending over both the main frame and stinger sections of the conveyor, Nohl et al. utilizes separate conveyor belts on the main frame and the stinger. Oury teaches that a single conveyor belt extending across a top surface of a main frame and a stinger may advantageously be driven by a single drive. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the pair of conveyor belts in the conveyor of Nohl et al. with a single conveyor belt extending across the top surface of the main frame and the stinger as taught by Oury. When this is done, the resulting conveyor would have generally all the structure required by claims 1 and 5-10.

In regard to the drive mechanism for the wheels and the means for resisting motion of the wheels of claims 7-8, it is noted that while Nohl et al. does not discuss the drive for the wheels 28 in detail, such a drive would be an inherent part of the conveyor in order to move the conveyor from side to side as illustrated in Fig. 17. Furthermore, the presence of brake lights and turn signals on the conveyor clearly suggest to one of ordinary skill in the art that the wheels 28 also have brakes to resist rotation of the drive wheels.

In regard to the limitation of claim 10, that the extension cable pass around a pulley and then to the first end of the stinger and that a separate retraction cable extends from the winch to the first end of the stinger, it is again noted that Nohl et al. does not discuss the path of the extension cable 150 in detail. However the cable must inherently pass over a pulley of some sort at the end of the main frame before connecting to the stinger in order to pull the stinger out of the

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main frame. Furthermore, while no retraction cable is used to pull the singer back into the main frame, such a cable is deemed to have been an obvious design choice absent some disclosure in the applicant's specification of some unusual advantage or result. *In re Kuhle*, 188 USPQ 7 (CCPA 1975).

Finally, in regard to the limitation of claim 12 that the conveyor include a hitch structured for securing to a hitch of a truck disposed at the tail end of the base, it should be noted that column 14, line 27 states that a hitch may be included but is silent as to its placement. However, as the placement of the hitch does not affect the operation of the conveyor, placing the hitch on the tail end of the base is also deemed to be an obvious rearrangement of parts and a matter of obvious design choice.

#### ***Allowable Subject Matter***

7. Claims 2-5, 11, and 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. Claims 18-20 are allowed.

#### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lane, Cary et al., Greasley, and Oury et al. all show stacking telescoping conveyors having telescoping stingers mounted within a main frame and single conveyor belts extending

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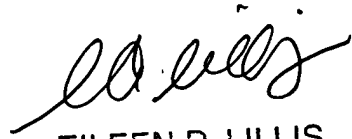
across a top surface of the main frame and the stinger in a fashion similar to that of the present invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (703) 305-9734. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P Ellis can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md



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